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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/966,632 Confirmation No. 5027
Applicant (s) : Yohannes Chonde, et al.
Filed : September 28, 2001
TC/A.U. : 1711
Examiner : John M. Cooney
Title : WATER-FREE PREPARATION PROCESS FOR MULTIMODAL
THERMOPLASTIC POLYMER FOAM AND FOAM THEREFROM

Docket No. : 60418A
Customer No. : 00109

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Amber K. Mobley

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September 25th, 2003

DATE OF SIGNATURE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE

Responsive to the Official Action dated 5 September 2003, Claims 1 to 20 are pending in the above Application and subject to a requirement under 35 U. S. C. 121 to elect a single disclosed species for prosecution on the merits. Claims 1 to 20 are also subject to a requirement under 35 U. S. C. 121 to choose one of two inventions according to an allocation of the claims made by the Office.

Applicants thank the Examiner for taking time to speak with the undersigned the afternoon of 22 September 2003 and briefly clarify the Election of Species and Restriction requirements.

Applicants respond to the Election of Species requirement by selecting polystyrene as the thermoplastic resin. Pending Claims 11 and 18 both identify polystyrene as a thermoplastic resin.

Applicants respectfully traverse the Restriction Requirement. In order to be completely responsive, Applicants provisionally elect the Invention placed in Group II and embodied in Claims 7 – 20. If the Office conclusively rejects Applicants' arguments that support the traversal, then Applicants authorize the Office to put their provisional election into effect.

Applicants concur in the Office's suggestion that Inventions I (Claims 1 – 6) and II (Claims 7 – 20) are related as process of making and product made. They do not, however, agree with the Office's position that the product could "be made by a materially different process such as by leaching a leachable material from a thermoplastic material so as to foam cells". Applicants do not believe that leaching could produce the thermoplastic polymer foam of Claim 7. They are also unaware of any process other than the process of Claims 1-6 that would yield the product of Claims 7-20.

Claim 7 has two required features, only one of which that might result from leaching could be effected by leaching. That feature, "a multimodal cell size distribution containing large and small cells defined therein", might be possible if the foam is an open cell foam and a percolating liquid has access to domains of leachable material provided the domains differ in size enough to be classified as "large" or "small". Alternatively, cells of one size could be made using a blowing agent and cells of a second size could be made via leaching, again in an open cell foam.

The other feature, "a blowing agent stabilizer predominantly located proximate to the large cells", does not seem to be attainable either from the leaching process or the alternative noted in the immediately preceding paragraph. Merriam Webster's Collegiate Dictionary, Tenth Edition (1997) defines "proximate" as meaning "very near: close". As such, "proximate to" means "very near to" or "close to" the large cells. That meaning tracks with Claim 1 and the specification at page 6, line 15 through page 7, line 24 and page 22, lines 3 – 6. The blowing agent stabilizer is dispersed in the thermoplastic resin that forms foam cell walls and struts. As noted above, it is located preferentially or predominantly close to the "large" cells. The blowing agent stabilizer is not disposed or located as a solid material within the cells as might be the case if a non-leachable stabilizer

were mixed only with large aliquots of leachable material and the large aliquots of stabilizer-containing leachable material were dispersed in a thermoplastic matrix together with small aliquots of stabilizer-free leachable material.

While Applicants do not see any practical route whereby leaching could produce the product of Claims 7 – 20, they remain open to possibilities they have not considered. As such, they invite the Office to explain and support such a possibility. In the absence of such explanation and support, they respectfully ask the Office to withdraw the restriction requirement.

As this response has a marking date shown in the Certificate of Mailing prior to the response deadline of 5 October 2003 and as it includes no claim amendments, no fees should be due.

Respectfully submitted,



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